

STATEMENT OF CONSIDERATION RELATING TO
907 KAR 20:075

Department for Medicaid Services
Amended After Comments

(1) A public hearing regarding 907 KAR 20:075 was not requested and; therefore, not held.

(2) The following individuals submitted written comments regarding 907 KAR 20:075:

<u>Name and Title</u>	<u>Organization/Agency/Other Entity</u>
Cara Stewart, Health Law Fellow	Kentucky Equal Justice Center
Kathy Adams, Director of Public Policy	Children's Alliance
Teresa C. James, Commissioner	Department for Community Based Services (DCBS)

(3) The following individual from the promulgating agency responded to comments received regarding 907 KAR 20:075:

<u>Name and Title</u>	<u>Organization/Agency/Other Entity</u>
Lee Guice, Director	Department for Medicaid Services, Division of Policy and Operations,
Marchetta Carmicle, Administrative Branch Manager	Department for Medicaid Services, Division of Policy and Operations, Eligibility Policy Branch
Stuart Owen, Regulation Coordinator	Department for Medicaid Services

SUMMARY OF COMMENTS AND AGENCY'S RESPONSES

(1) Subject: Age of Former Foster Care Individuals

(a) Comment: Teresa C. James, Commissioner of the Department for Community Based Services stated the following:

"This administrative regulation applies to former foster care individuals between the ages of 19 and 26. DCBS' understanding is that the lower age should be 18, not 19.

There are other instances throughout these administrative regulations filed on September 30th that the age range of former foster care individuals is given as 19 to 26.

These other instances appear to also require correction.”

Kathy Adams, Directory of Public Policy for Children’s Alliance, stated the following: ““Necessity, Function, and Conformity”, Sections 1, 2, 3 and 4: There is great concern, based upon the definition of “child” set forth in 907 KAR 20:001, that foster children currently only eligible for Medicaid coverage until they turn 18, that become “former foster children” will not again be eligible for Medicaid coverage under ACA and this regulation until they turn 19. This would mean there is a year that a foster child, age 18 or over on extended commitment, or a former foster child that is age 18, would not be covered by Medicaid until they turn 19. Simply stated, it appears that there will be a year (when they are 18 years old) that a foster child or former foster child will not be covered by Medicaid. As stated in the “Necessity, Function, and Conformity”, Sections 1, 2, 3 and 4, this regulation is specific to individuals between the ages of nineteen (19) and twenty-six (26) years. How will a foster youth on extended commitment or former foster children that is age 18 be covered by Medicaid? “

(b) Response: The age range is established in the Affordable Care Act. Foster children who are eighteen (18) but not yet nineteen (19) qualify for health insurance coverage through the Kentucky Children’s Health Insurance Premium (KCHIP) Program.

(2) Subject: Suggested Items to be removed from Regulation

(a) Comment: Kathy Adams, Directory of Public Policy for Children’s Alliance, stated the following:

“Section 5, Page 2 to 7: Some of the language contained in Section 5, Citizenship and Residency Requirements does not apply to the specific group of individuals that this regulation applies to. Recommend the inapplicable language in Section 5 be removed.”

(b) Response: The Department for Medicaid Services (DMS) agrees and is deleting, via an “amended after comments” administrative regulation, subsections (3), (4), (5), and (6) from Section 5 of the administrative regulation.

(c) Comment: Kathy Adams, Directory of Public Policy for Children’s Alliance, stated the following:

“Page 5, line 3 and 4: (3)(a) conflicts with Section 2. Recommend (3)(a) be struck or an exception based on citizenship and residency requirements be added to Section 2.”

(d) Response: DMS agrees and is deleting, via an “amended after comments” administrative regulation, subsection (3).

(e) Comment: Kathy Adams, Directory of Public Policy for Children’s Alliance, stated the following:

“Page 6, line 9 to 11: The requirements of (4)(a)6. and 7. do not appear applicable given

that this regulation is specific to former foster children. Recommend these provisions be struck.”

(f) Response: DMS agrees and is deleting, via an “amended after comments” administrative regulation, the language as recommended.

(g) Comment: Kathy Adams, Directory of Public Policy for Children’s Alliance, stated the following:

“Page 7, line 2 to 4: (b) 2. appears to conflict Section 2 which states there will be no income requirement for former foster youth between the ages of 19 and 26. Recommend (b) 2. be struck or an exception be added to Section 2.”

(h) Response: DMS agrees and is deleting, via an “amended after comments” administrative regulation, the language as recommended.

(i) Comment: Kathy Adams, Directory of Public Policy for Children’s Alliance, stated the following:

“Page 7, line 8 to 11: Recommend 1(b) be struck as it would not be applicable to individuals between the ages of 19 and 26. (1)(b) is specific to a child. Recommend (1)(a) be renumber to (1), if (b) is eliminated.”

(j) Response: DMS is eliminating subsection (1)(b) and renumbering subsection (1)(a) via an “amended after comments” administrative regulation.

(k) Comment: Kathy Adams, Directory of Public Policy for Children’s Alliance, stated the following:

“Page 8, line 4: Recommend (1)(c)3. and (2) be struck as it is not applicable to individuals between the ages of 19 and 26. An individual age 19 to 26 could not be a patient in a mental hospital or psychiatric facility over the age of 65 or a patient in a nursing facility that has reached age 65.”

(l) Response: DMS is deleting subsection (1)(c)3 via an “amended after comments” administrative regulation. Via an “amended after comments” administrative regulation, DMS is deleting “unless the individual has reached aged sixty-five (65)” from subsection (1)(d) as displayed below:

“(d) Patient in a nursing facility classified by the Medicaid program as an institution for mental diseases~~[, unless the individual has reached age sixty-five (65)]~~.”

(m) Comment: Kathy Adams, Directory of Public Policy for Children’s Alliance, stated the following:

“Page 8, line 7 to 9: Recommend (2) be struck as it seems duplicative of Section 8.”

(n) Response: The language is indeed duplicative and DMS is deleting language in Section 8 via an “amended after comments” administrative regulation.

(o) Comment: Kathy Adams, Directory of Public Policy for Children’s Alliance, stated the following:

“Page 9, Section 11: Section 11 appears to be standard language relative to third-party liability but does not appear relevant to individuals between the ages of 19 and 26. Recommend it be struck or re-written to clarify the specific applicability to this specific population.”

(p) Response: DMS agrees and is deleting, via an “amended after comments” administrative regulation, the language as recommended.

(q) Comment: Kathy Adams, Directory of Public Policy for Children’s Alliance, stated the following:

“Page 10, line 5 and 6: Recommend that (3) be struck as this regulation is specific to Medicaid eligibility for individuals between the ages of 19 and 26. This regulation is not applicable to ‘pregnant women eligible under poverty level standards.’”

(r) Response: DMS agrees and is deleting, via an “amended after comments” administrative regulation, the language as recommended.

(3) Subject: Grammatical Suggestions

(a) Comment: Kathy Adams, Directory of Public Policy for Children’s Alliance, stated the following:

“Page 6, line 18 to 20: Recommend the words “for citizenship and residency requirements” be added after ‘eligibility’ and before ‘are met’ to clarify that (6)(a) is specific to citizenship and residency requirements. Recommend line 20 read, ‘....if all conditions of eligibility for citizenship and residency requirements are met.’”

(b) Response: DMS is deleting, via an “amended after comments” administrative regulation, the language as it does not apply to former foster care individuals.

(c) Comment: Kathy Adams, Directory of Public Policy for Children’s Alliance, stated the following:

“Page 6, line 23 and Page 7, line 1: This sentence does not make sense as written. Recommend adding the word ‘which’ before the word ‘shall’ so that it reads, ‘....pursuant to this administrative regulation which shall be no earlier than January 1, 2014;.’”

(d) Response: DMS is deleting, via an “amended after comments” administrative regulation, the language as it does not apply to former foster care individuals.

(e) Comment: Kathy Adams, Directory of Public Policy for Children’s Alliance, stated the following:

“Page 10, line 20 to 21: Recommend language be added to indicate who is responsible for processing the application, for instance: “An application shall be processed by the Department”

(f) Response: The party responsible for processing an application could vary; thus, DMS is inserting (via an “amended after comments” administrative regulation) the following bold-faced and underlined revised language:

“(3)(a) An application shall be processed (approved, denied, or a request for additional information sent) **by the department or other entity involved in processing the given application** within forty-five (45) days of application submittal.”

(g) Comment: Kathy Adams, Directory of Public Policy for Children’s Alliance, stated the following:

“Page 10, line 23: Recommend that ‘by the Department’ be added to line 23 to indicate who is responsible for generating the requested verification, for instance: ‘.....a request for additional information shall be generated by the Department requesting verification....”

(h) Response: The party responsible for requesting verification could vary; thus, DMS is inserting (via an “amended after comments” administrative regulation) the following bold-faced and underlined revised language:

“(b) If a trusted source indicates that an applicant is incarcerated, a request for additional information shall be generated **by the department or other entity involved in processing the application** requesting verification of the applicant’s incarceration dates **or status**.”

(i) Comment: Kathy Adams, Directory of Public Policy for Children’s Alliance, stated the following:

“Page 10, line 23 and Page 11, line 1: Recommend the phrase ‘or status’ be added at the end of the sentence to clarify that the applicant could be currently incarcerated so that it reads: ‘.....the applicant’s incarceration dates or status.”

(j) Response: DMS is inserting the recommended language in an “amended after comments” administrative regulation.

(4) Subject: Inclusion of Failure to Report Changes

(a) Comment: Kathy Adams, Directory of Public Policy for Children's Alliance, stated the following:

"Page 11, line 17 and 18: Recommend that the penalty for failure to report changes in circumstance in (4) be added and that the changes required to be reported be added. Currently it is not clear what changes the individual is required to report."

(b) Response: DMS is deleting the language via an "amended after comments" administrative regulation.

(5) Subject: General Comments

(a) Comment: Cara Stewart, Health Law Fellow of Kentucky Equal Justice Center, stated the following:

"We appreciate this regulation and support the intent of providing ongoing stability into adulthood for individuals previously participating in foster care in Kentucky. Thank you."

(b) Response: Thank you for expressing your support.

(6) Subject: Duplicative Language – Section 8

(a) and (b) Comment and Response: DMS is deleting the language in Section 8, which is language establishing incarceration status provisions, from the administrative regulation via an "amended after comments" administrative regulation as it duplicates language stated in Section 7.

(7) Subject: Application for Other Benefits

(a) and (b) Comment and Response: DMS is deleting Section 9, a section requiring individuals to apply for other public benefits if eligible, from the administrative regulation via an "amended after comments" administrative regulation as it does not apply to former foster care individuals.

(8) Subject: Assignment of Rights to Medical Support

(a) and (b) Comment and Response: DMS is deleting Section 10, a section addressing the assignment of medical support of a recipient to the Cabinet for Health and Family Services, from the administrative regulation via an "amended after comments" administrative regulation as it does not apply to former foster care individuals.

(9) Subject: Application Process

(a) and (b) Comment and Response: Via an "amended after comments" administrative regulation, DMS is deleting subsections (4) and (5) from the application process section

(Section 12) as the requirements – which related to annual renewal and reporting a change in eligibility circumstances - do not apply to former foster care individuals.

(10) Subject: Implementation Date

(a) and (b) Comment and Response: Via an “amended after comments” administrative regulation, DMS is deleting Section 14 – a section establishing the implementation date for the provisions in the administrative regulation – as this is an ordinary administrative regulation which will not become effective until after the stated implementation date.

SUMMARY OF STATEMENT OF CONSIDERATION
AND
ACTION TAKEN BY PROMULGATING ADMINISTRATIVE BODY

The Department for Medicaid Services (DMS) has considered the comments received regarding 907 KAR 20:075 and is amending the administrative regulation as follows:

Page 2

Section 5(2)

Line 18

After “(2)”, delete the following:

Except as established in subsection (3) or (4) of this section,

Page 3

Section 5(2)(a)2

Line 1

After “2.”, delete the following:

Except as provided in subsection (3) of this section,

Page 5

Sections 5(3), (4), (5), and (6)

Line 1 through

Page 7

Line 4

Delete subsections (3), (4), (5), and (6) in their entirety.

Page 7

Section 6(1)(a)

Line 5

After “(1)”, delete “(a)”.

Page 7

Section 6(1)(b)

Lines 8 through 11

Delete paragraph (b) in its entirety.

Page 7

Section 7(1)(b)

Line 22

After “unless”, insert “the individual”.

Delete “he”.

Page 8

Section 7(1)(c)1

Line 1

After “age;”, insert “or”.

Page 8

Section 7(1)(c)3

Line 4

Delete subparagraph 3 in its entirety.

Page 8

Section 7(1)(d)

Line 6

After “diseases”, delete the following:

, unless the individual has reached age sixty-five (65)

Page 8

Section 7(2)

Line 7

After “regulation”, insert “shall”.

Delete “may”.

Page 8

Sections 8, 9, 10, 11, and 12

Line 10 through

Page 10

Line 7

After “Section 8.”, delete the title and language in Section 8, delete Sections 9, 10, and 11 in their entirety, and delete “Section 12.”.

Page 10

Section 12(3)(a)

Line 21

After “sent)”, insert the following:

by the department or other entity involved in processing the given application

Page 10

Section 12(3)(b)

Line 23

After “generated”, insert the following:

by the department or other entity involved in processing the given application

Page 11

Section 12(3)(b)

Line 1

After “dates”, insert “or status”.

Page 11

Sections 12(4) and (5)

Line 5 through 18

Delete these two (2) subsections in their entirety.

Page 11

Section 13

Line 19

After “Section”, insert “9.”.

Delete “13.”.

Page 11

Section 14

Line 23 through

Page 12

Line 6

Delete this section in its entirety.